

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 JEANETTE RODRIGUEZ KING,) NO. ED CV 14-533-AS
12)
13 Plaintiff,) **MEMORANDUM AND OPINION**
14)
15 v.)
16)
17 CAROLYN W. COLVIN, Acting)
Commissioner of Social)
Security,)
18)
19 Defendant.)
20)
21)
22)
23)
24)
25)
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28)

PROCEEDINGS

On March 25, 2014, plaintiff filed a Complaint seeking review of the Commissioner's denial of her application for a period of disability, and disability insurance benefits ("DIB"), and supplemental security income ("SSI"). (Docket Entry No. 3). On August 12, 2014, defendant filed an Answer and the Administrative Record ("A.R."). (Docket Entry Nos. 12, 13). The parties have consented to proceed before a United States Magistrate Judge.

1 (Docket Entry Nos. 9, 10). On October 29, 2014, the parties filed
2 a Joint Stipulation ("Joint Stip.") setting forth their respective
3 positions regarding plaintiff's claim. (Docket Entry No. 15).
4 The Court has taken this matter under submission without oral
5 argument. See C.D. Local R. 7-15; "Order Re Procedures in Social
6 Security Case," filed April 1, 2014 (Docket Entry No. 7).

7

8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

9

10 Plaintiff asserts disability beginning April 21, 2010¹ based
11 on a combination of alleged impairments. (A.R. 188). The
12 Administrative Law Judge, Jennifer A. Simmons ("ALJ"), examined
13 the medical record and heard testimony from plaintiff and Troy L.
14 Scott, a vocational expert ("VE"), on September 6, 2012. (A.R.
15 27, 35-36, 70-75). The ALJ found that plaintiff has the severe
16 impairments of status post colostomy, hypothyroidism, and
17 overweight/obesity and the non-severe conditions of carpal tunnel
18 syndrome and depression (A.R. 30-31), and that plaintiff did not
19 have an impairment or combination of impairments that meets or
equals the severity of a listed impairment. (A.R. 31).

20

21 The ALJ found that plaintiff retained the residual functional
22 capacity ("RFC") to perform medium work, and can "lift/ and or
23 carry 50 pounds occasionally and 25 pounds frequently . . . sit,
24 stand and/or walk without any restrictions, but with appropriate
25 breaks every two hours . . . should have bathroom privileges at

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28 ¹ Although plaintiff initially claimed a disability onset date of May 31, 2008, she amended the onset date to April 21, 2010 at the administrative hearing. (A.R. 54).

the worksite . . . and would need one day off from work every four months for dilation of her stoma." (A.R. 31).

Relying on the testimony of the VE, the ALJ determined that plaintiff was able to perform her past relevant work as a "[h]ome health aide, DOT² No. 354.377-014, medium, semi-skilled (SVP),³ as generally performed pursuant to the DOT, but actually performed as light work as described by the [plaintiff]."⁴ (A.R. 35). Alternatively, the ALJ found that, in addition to her past relevant work, plaintiff was able to perform other jobs existing in significant numbers in the national economy based on the VE's testimony that plaintiff's age, education, work experience and RFC rendered her able to perform the duties of hand packager (DOT No. 920.587-018), dry clean worker (DOT No. 361.687.018), and cleaner (DOT No. 381.687-018), which were all classified as medium, unskilled positions. (A.R. 35-36). The ALJ deemed plaintiff's subjective complaints of disabling symptomatology not credible. (A.R. 32-34).

On October 31, 2012, the ALJ issued a decision finding that plaintiff was not disabled at any time from the alleged disability onset date of April 21, 2010 through the date of the decision and denied plaintiff's application for DIB and SSI. (A.R. 27-37).

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² Dictionary of Occupational Titles.

³ Specific Vocational Preparation, as defined in Appendix C of the Dictionary of Occupational Titles.

PLAINTIFF'S CONTENTION

Plaintiff contends that the ALJ erred in her assessment of plaintiff's credibility. (Joint Stip. 5).

STANDARD OF REVIEW

This Court reviews the Commissioner's decision to determine if: (1) the Commissioner's findings are supported by substantial evidence; and (2) the Commissioner used correct legal standards. 42 U.S.C. § 405(g); see Carmickle v. Comm'r, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007). "Substantial evidence is more than a scintilla, but less than a preponderance." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998) (citing Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is relevant evidence "which a reasonable person might accept as adequate to support a conclusion." Hoopai, 499 F.3d at 1074; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996)). To determine whether substantial evidence supports a finding, "a court must 'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 1997) (citation omitted); see Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006) (inferences "reasonably drawn from the record" can constitute substantial evidence).

This Court "may not affirm [the Commissioner's] decision simply by isolating a specific quantum of supporting evidence, but

1 must also consider evidence that detracts from [the
 2 Commissioner's] conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th
 3 Cir. 1987) (citation and internal quotation marks omitted);
 4 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007)
 5 (same). However, the Court cannot disturb findings supported by
 6 substantial evidence, even though there may exist other evidence
 7 supporting Plaintiff's claim. See Torske v. Richardson, 484 F.2d
 8 59, 60 (9th Cir. 1973). "If the evidence can reasonably support
 9 either affirming or reversing the [Commissioner's] conclusion, [a]
 10 court may not substitute its judgment for that of the
 11 [Commissioner]." Reddick, 157 F.3d 715, 720-21 (9th Cir. 1998)
 12 (citation omitted).

13 **APPLICABLE LAW**

14
 15 "The Social Security Act defines disability as the 'inability
 16 to engage in any substantial gainful activity by reason of any
 17 medically determinable physical or mental impairment which can be
 18 expected to result in death or which has lasted or can be expected
 19 to last for a continuous period of not less than 12 months.'"
 20 Webb v. Barnhart, 433 F.3d 683, 686 (9th Cir. 2005) (quoting 42
 21 U.S.C. § 423 (d) (1) (A)). The ALJ follows a five-step, sequential
 22 analysis to determine whether a claimant has established
 23 disability. 20 C.F.R. § 404.1520.

24
 25 At step one, the ALJ determines whether the claimant is
 26 engaged in substantial gainful employment activity. Id. §
 27 404.1520(a) (4) (i). "Substantial gainful activity" is defined as
 28 "work that . . . [i]nvolves doing significant and productive

1 physical or mental duties[] and . . . [i]s done (or intended) for
2 pay or profit." Id. §§ 404.1510, 404.1572. If the ALJ determines
3 that the claimant is not engaged in substantial gainful activity,
4 the ALJ proceeds to step two which requires the ALJ to determine
5 whether the claimant has a medically severe impairment or
6 combination of impairments that significantly limits her ability
7 to do basic work activities. See id. § 404.1520(a)(4)(ii); see
8 also Webb, 433 F.3d at 686. The "ability to do basic work
9 activities" is defined as "the abilities and aptitudes necessary
10 to do most jobs." 20 C.F.R. § 404.1521(b); Webb, 433 F.3d at
11 686. An impairment is not severe if it is merely "a slight
12 abnormality (or combination of slight abnormalities) that has no
13 more than a minimal effect on the ability to do basic work
14 activities." Webb, 433 F.3d at 686.

15 If the ALJ concludes that a claimant lacks a medically severe
16 impairment, the ALJ must find the claimant not disabled. Id.; 20
17 C.F.R. § 1520(a)(ii); Ukolov v. Barnhart, 420 F.3d 1002, 1003 (9th
18 Cir. 2005) (ALJ need not consider subsequent steps if there is a
19 finding of "disabled" or "not disabled" at any step).

20
21 However, if the ALJ finds that a claimant's impairment is
22 severe, then step three requires the ALJ to evaluate whether the
23 claimant's impairment satisfies certain statutory requirements
24 entitling her to a disability finding. Webb, 433 F.3d at 686. If
25 the impairment does not satisfy the statutory requirements
26 entitling the claimant to a disability finding, the ALJ must
27 determine the claimant's RFC, that is, the ability to do physical
28 and mental work activities on a sustained basis despite

1 limitations from all her impairments. 20 C.F.R. § 416.920(e).

2
3 Once the RFC is determined, the ALJ proceeds to step four to
4 assess whether the claimant is able to do any work that she has
5 done in the past, defined as work performed in the last fifteen
6 years prior to the disability onset date. If the ALJ finds that
7 the claimant is not able to do the type of work that she has done
8 in the past or does not have any past relevant work, the ALJ
9 proceeds to step five to determine whether - taking into account
10 the claimant's age, education, work experience and RFC - there is
11 any other work that the claimant can do and if so, whether there
12 are a significant number of such jobs in the national economy.
13 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999); 20 C.F.R.
14 § 404.1520(a)(4)(iii)-(v). The claimant has the burden of proof
15 at steps one through four, and the Commissioner has the burden of
16 proof at step five. Tackett, 180 F.3d at 1098.

17 **DISCUSSION**

18
19 After consideration of the record as a whole, the Court finds
20 that the Commissioner's findings are supported by substantial
21 evidence and are free from material⁴ legal error.

22 ///

23 ///

24
25 _____
26 ⁴ The harmless error rule applies to the review of
27 administrative decisions regarding disability. See McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,
28 400 F.3d 676, 679 (9th Cir. 2005) (stating that an ALJ's decision
will not be reversed for errors that are harmless).

1 **A. The ALJ Did Not Err in Evaluating Plaintiff's Credibility**

3 Where, as here, the ALJ finds that a claimant suffers from a
 4 medically determinable impairment that could reasonably be
 5 expected to produce her alleged symptoms, the ALJ must evaluate
 6 “the intensity, persistence, and functionally limiting effects of
 7 the individual’s symptoms . . . to determine the extent to which
 8 the symptoms affect the individual’s ability to do basic work
 9 activities. This requires the [ALJ] to make a finding about the
 10 credibility of the individual’s statements about the symptom(s)
 11 and its functional effect.” Soc. Sec. Ruling (“SSR”) 96-7p.

12 An ALJ’s assessment of a claimant’s credibility is entitled
 13 to “great weight.” Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th
 14 Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985).
 15 The ALJ may not discount the claimant’s testimony regarding the
 16 severity of the symptoms without making “specific, cogent”
 17 findings. Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995); see
 18 also Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010)
 19 (reaffirming same); but see Smolen, 80 F.3d at 1283-84 (indicating
 20 that ALJ must provide “specific, clear and convincing reasons to
 21 reject a claimant’s testimony where there is no evidence of
 22 malingering); see Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th
 23 Cir. 1990).⁵ Generalized, conclusory findings do not suffice. See

25 ⁵ In the absence of evidence of “malingering,” most recent
 26 Ninth Circuit cases have applied the “clear and convincing”
 27 standard. See, e.g., Chaudhry v. Astrue, 688 F.3d 661, 670, 672
 28 n.10 (9th Cir. 2012); Molina v. Astrue, 674 F.3d 1104, 1112 (9th
 Cir. 2012); Taylor v. Comm'r, 659 F.3d 1228, 1234 (9th Cir. 2011);
 (continued...)

1 Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004) (the ALJ's
 2 credibility findings "must be sufficiently specific to allow a
 3 reviewing court to conclude the [ALJ] rejected [the] claimant's
 4 testimony on permissible grounds and did not arbitrarily discredit
 5 the claimant's testimony") (citation and internal quotation marks
 6 omitted); Holohan v. Massanari, 246 F.3d 1195, 1208 (9th Cir.
 7 2001) (the ALJ must "specifically identify the testimony [the ALJ]
 8 finds not to be credible and must explain what evidence undermines
 9 the testimony"); Smolen, 80 F.3d at 1284 ("The ALJ must state
 10 specifically which symptom testimony is not credible and what
 11 facts in the record lead to that conclusion."); see also SSR 96-
 12 7p.

13 Plaintiff asserts that the ALJ failed to articulate "any
 14 clear and convincing reasons" to find Plaintiff not credible.
 15 (Joint Stip. 12).

16 As described by the ALJ, Plaintiff testified at the hearing
 17 to the following:

18 The claimant also claimed she was disabled as a result
 19 of an alleged gastrointestinal (GI) impairment,
 20 requiring an internal GI pouch placement, and to a

21 ⁵(...continued)

22 Valentine v. Comm'r, 574 F.3d 685, 693 (9th Cir. 2009); Ballard v.
 23 Apfel, 2000 WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000)
 24 (collecting cases). In the present case, the ALJ's findings pass
 25 muster under either the "specific, cogent" standard or the "clear
 26 and convincing" standard, so any distinction between the two
 27 standards (if any) is academic.

1 lesser extent a cyst on her neck . . . The claimant
2 alleged her activities of daily living were impacted
3 such that she was limited to lying around the house
4 because of chronic pain associated with her GI pouch,
5 for which she claimed she took pain medication daily.
6 She further indicated the GI pouch required regular
7 intubation to avoid leaks and escape of odors. The
8 claimant additionally indicated she received treatment,
9 which involved monitoring and dilation of her GI pouch
10 every six months, pain medication, and hospitalization
11 for a bowel obstruction. . . . the claimant also
12 testified she provided in-home health services to her
13 adult son, who suffers from the same alleged impairment.
14 Those services included cooking, doing laundry, and
15 monitoring medications.

16 (A.R. 32-33).

17
18 After considering the record and the testimony presented at
19 the hearing, the ALJ found plaintiff's statements concerning the
20 intensity, persistence and limiting effects of her symptoms "not
21 credible to the extent they are inconsistent with" the ALJ's RFC
22 assessment. (A.R. 32).

23
24 The ALJ gave the following reasons for discounting
25 Plaintiff's credibility: (1) plaintiff's statements regarding the
26 severity of the limiting effects of her alleged impairment were
27 exaggerated; (2) plaintiff's activities of daily living, including
28 the services she provided for her adult son, were inconsistent

1 with her claimed functional limitations; (3) plaintiff's treatment
2 since the amended onset date of April 21, 2010 has been
3 conservative in nature; and (4) the objective medical evidence did
4 not support the extent of plaintiff's alleged functional
5 limitations. (A.R. 32-33).

6
7 As set forth below, the Court finds that the ALJ stated
8 legally sufficient reasons for her adverse credibility finding.

9
10 **1. Inconsistencies in Testimony**

11
12 The ALJ may rely on "ordinary techniques of credibility
13 evaluation" in considering Plaintiff's credibility. Smolen, 80
14 F.3d at 1284. As a result, "the adjudicator may discredit the
15 claimant's allegations based on inconsistencies in the testimony
16 or on relevant character evidence." Bunnell, 947 F.2d at 346;
17 Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999)
18 (inconsistencies in claimant's various statements cited as a clear
19 and convincing reason for rejecting the claimant's testimony).
20 The ALJ's review of the record revealed that plaintiff's
21 statements regarding the severity of the limiting effects of her
22 impairment were not fully credible, given "evidence of
23 exaggeration." (A.R. 32). Specifically, the ALJ noted that,
24 "[d]espite alleging her GI pouch required dilation every six
25 months . . . she later indicated her GI pouch had not been dilated
26 since 2008 because of a lack of health insurance, a stark contrast
27 to her prior statement . . . she obtained insurance as far back as
28 December of 2011, yet, she still had not undergone dilation of her
GI pouch as of the date of the hearing." (A.R. 32).

1 Q: And so you haven't been dilated in . . . four years?

2 A. Four years, yes.

3 Q: So what -- how does this affect what you do every day?

4 A: It's just painful . . .

5
6 (A.R. 58). Thus, the ALJ determined that plaintiff's credibility
7 regarding her chronic pain from the GI pouch was undermined by
8 testimony that even after she had obtained health insurance in
9 December 2011 (nine months prior to the hearing), she had still
10 not undergone the required procedure to alleviate the pain. (A.R.
11 32, 56-58).

12
13 The ALJ also questioned the veracity of plaintiff's
14 allegations of chronic pain for which she was taking daily pain
15 medication in light of her admission that when she did not have
16 insurance, she was using ibuprofen for the pain. (A.R. 59).
17 "Additionally, although [t]he claimant indicated she suffered from
18 chronic pain related to her GI pouch and took daily medication,
19 she also reported she was not on any pain medication while she did
not have health insurance." (A.R. 33).

20
21 In addition, the ALJ found no support in the medical record
22 for plaintiff's testimony regarding her hospitalization in
23 September 2011 for bowel obstruction. (A.R. 33). Plaintiff
24 testified that she was hospitalized for 4-5 days in September or
25 October 2011 for valve obstruction, but the records from that
26 hospitalization reveal that plaintiff was admitted and discharged
27 on the same day - September 30, 2011 - and there was no evidence

1 of any obstruction. Id.; see A.R. 51, 59, 344-63. "Contradiction
2 with the medical record is a sufficient basis for rejecting the
3 claimant's subjective testimony." Carmickle v. Comm'r Soc. Sec.
4 Admin., 533 F.3d 1155, 1161 (9th Cir. 2008); See also Burch v.
5 Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of
6 medical evidence cannot form the sole basis for discounting pain
7 testimony, it is a factor that the ALJ can consider in his
8 credibility analysis."). The ALJ properly relied on the lack of
9 objective medical evidence supporting plaintiff's testimony in
10 making an adverse credibility determination.

11
12 Thus, the Court finds that the inconsistencies in plaintiff's
13 statements and testimony was a clear and convincing reason for the
14 ALJ to discount plaintiff's credibility.

15
16 **2. Activities of Daily Living**

17
18 The ALJ found plaintiff's subjective complaints to be
19 inconsistent with the in-home health services she provided to her
20 adult son as a home health aide. (A.R. 32-33). These activities
21 included cooking, doing laundry and monitoring medications. Id.
22 Plaintiff's claims regarding disability were undermined by her
23 admissions regarding the services she provided for her adult son
24 and the ALJ was entitled to find that plaintiff's activities of
25 daily living suggested that her "alleged impairment was not as
26 severe as she had alleged." (A.R. 33). When asked whether she
27 required in home services for herself, plaintiff testified that
28 she had told her treating doctor that she did not need these

1 services but now felt that she should have such services because
2 she needed help going to the store. ("My Dr. Velasquez had asked
3 me if I wanted to, and at that time I didn't feel like I needed it
4 . . . But I feel like I should have because – to go to the store,
5 my oldest goes to work, I'm going to, you know, need help going to
6 the store.") (A.R. 61).

8 Plaintiff contends that the ALJ failed to adequately explain
9 how her "ability to help her son, on her own schedule and at her
10 own pace, for a portion of the time" translates into the ability
11 to perform work on a full-time, competitive basis. (Joint Stip.
12 12). However, plaintiff cites no authority that requires the ALJ
13 to do so. Here, the inconsistencies between plaintiff's claimed
14 inability to work due to pain associated with her need to intubate
15 her GI pouch and use the restroom every half hour or 45 minutes,
16 and the symptoms of her carpal tunnel syndrome, including the
17 inability to lift over five to ten pounds and difficulty gripping
18 or grasping (A.R. 61-66), and plaintiff's admitted daily
19 activities of cleaning house, shopping for groceries, taking care
20 of her four-year old granddaughter and providing in home services
21 for her adult son (A.R. 59-60), amply support the ALJ's adverse
22 credibility determination. Moreover, the ALJ credited plaintiff's
23 testimony regarding her need to regularly use and have access to
24 the restroom and her need for regular dilation of her GI pouch by
25 factoring these limitations into the RFC. Thus, the RFC included
26 the limitation that plaintiff have breaks every two hours,
27 bathroom privileges at the worksite and have one day off from work
every four months for dilation of her stoma. (A.R. 31).

1 An ALJ may properly rely on inconsistencies between a
2 claimant's testimony and her conduct and daily activities. See,
3 e.g., Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005)
4 (daily activities can constitute "clear and convincing reasons"
5 for discounting a claimant's testimony); Thomas v. Barnhart, 278
6 F.3d 947, 958-59 (9th Cir. 2002) (inconsistency between the
7 claimant's testimony and the claimant's conduct supported the
8 rejection of the claimant's credibility); Rollins v. Massanari,
9 261 F.3d 853, 857 (9th Cir. 2001) (claimant's testimony regarding
10 daily domestic activities undermined the credibility of her pain-
related testimony); Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th
11 Cir. 1999) (inconsistencies between claimant's testimony and
12 actions cited as a clear and convincing reason for rejecting the
13 claimant's testimony); Tidwell v. Apfel, 161 F.3d 599, 602 (9th
14 Cir. 1998) (ALJ may properly rely on weak objective support, lack
15 of treatment, daily activities inconsistent with total disability,
16 and helpful medication); and Fair v. Bowen, 885 F.2d 597, 603 (9th
17 Cir. 1989) ("[I]f, despite [a claimant's complaints], a claimant
18 is able to perform household chores and other activities that
19 involve many of the same physical tasks as a particular type of
20 job, it would not be farfetched for an ALJ to conclude that the
21 claimant's [complaints] do[] not prevent the claimant from
22 working.").

24 Here, the ALJ's finding that plaintiff's allegations
25 regarding the disabling effect of her symptoms were inconsistent
26 with the daily activities she was able to engage in was a valid
27 reason for discounting plaintiff's credibility.

1 3. Plaintiff's Conservative Treatment

2
3 "[E]vidence of 'conservative treatment' is sufficient to
4 discount a claimant's testimony regarding the severity of an
5 impairment." Parra v. Astrue, 481 F.3d 742, 751 (9th Cir.
6 2007) (holding that Plaintiff's use of over-the-counter pain
7 medications to treat pain was inconsistent with Plaintiff's claims
8 that pain was disabling). The ALJ found Plaintiff's "treatment
9 since the [] amended onset date has been conservative in nature"
10 and determined that the "lack of more and/or aggressive treatment
11 suggests her symptoms and limitations were not as severe as she
12 alleged." (A.R. 33). A review of the record supports this
13 finding.

14
15 Plaintiff testified that during the two-year period following
16 the amended disability onset date of April 21, 2010, she had only
17 sought treatment from Dr. Rivera at the Loma Linda University
18 Medical Center and Dr. Velasquez at Family Practice and Associates
19 in Hesperia. (A.R. 49). The available records reflect routine
20 follow-up appointments with no evidence of acute exacerbation of
21 her symptoms. (A.R. 232-234, 366-69). Progress notes from
22 plaintiff's visits to Family Practice Associates in March, April
23 and September 11, 2012 recommend that plaintiff continue taking
24 pain medication and be provided with necessary supplies for her
25 stoma. (A.R. 366-69). Although the September 11, 2012 visit
26 documents a right lobe thyromegaly, the recommended treatment for
27 this condition was lab testing and a scheduled biopsy. (A.R. 337,
28 366). A September 30, 2011 visit to the emergency room at Loma

1 Linda University Medical Center revealed normal findings and
2 plaintiff was discharged after being provided with medication for
3 pain and nausea. (A.R. 342-363).

4

5 Accordingly, the ALJ properly discounted Plaintiff's
6 testimony regarding the limiting effects of her condition based
7 on her conservative treatment. See Johnson v. Shalala, 60 F.3d
8 1428, 1432 (9th Cir. 1995) (ALJ may properly rely on the fact that
9 only conservative treatment has been prescribed). Thus, this was
10 a clear and convincing reason to discount Plaintiff's credibility.

11

12 **4. Objective Medical Evidence**

13

14 Although a claimant's credibility "cannot be rejected on the
15 sole ground that it is not fully corroborated by objective medical
16 evidence, the medical evidence is still a relevant factor . . ." Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Lack of
17 supporting objective medical evidence is a key consideration for
18 the ALJ in evaluating credibility. See 20 C.F.R. §§
19 404.1529(c)(4), 416.929(c)(4) (in determining disability, an ALJ
20 must evaluate a claimant's statements about the intensity,
21 persistence and limiting effects of her symptoms "in relation to
22 the objective medical evidence and other evidence").

23

24 Here, the ALJ found that the objective medical evidence did
25 not fully support Plaintiff's complaints of total disability.
26 (A.R. 33-34). The Court's review of the record supports this
27 finding.

1 On November 4, 2010, the internal medicine consultative
2 examiner, Dr. Bryan H. To, who conducted a physical and
3 neurological examination, found that plaintiff was capable of
4 medium exertional work with environmental and postural limitations
5 despite her complaints of pain with range of motion. (A.R. 34,
6 297-99). Dr. To concluded that plaintiff was limited to pushing,
7 pulling, lifting and carrying 50 pounds occasionally and 25 pounds
8 frequently, could stand and walk six hours in an eight-hour day,
9 could frequently use her hands for fine and gross manipulative
10 movements but recommended that she be restricted from working with
11 heavy and moving machineries. (A.R. 298-99). With respect to
12 plaintiff's GI pouch, To reported that, "there is evidence of
13 right lower quadrant with the opening. Dressing was clean. Abdomen
14 was benign otherwise." (A.R. 298). Dr. To's examination also
15 revealed that plaintiff's grip strength was within normal limits,
16 her neck and back were unremarkable, and the symptoms of
17 plaintiff's carpal tunnel syndrome had improved with her use of
18 braces. (A.R. 298). Dr. To also noted that plaintiff regularly
19 catheterized and self intubated her GI pouch and followed up with
20 her physician every six months. (A.R. 298).

21 The state agency medical consultants, Dr. George Lockie and
22 Dr. A. Lizarraras, reviewed the medical evidence and agreed with
23 Dr. To's assessment that plaintiff was capable of medium
24 exertional work. (A.R. 300-307, 322-23).

25 The ALJ noted that there was "no reliable medical source
26 statement from any physician endorsing the extent of [plaintiff's]
27

1 alleged functional limitations." (A.R. 33). A review of the
2 record confirms this finding. (A.R. 255-369). Diagnostic test
3 results since the amended onset date of April 21, 2010 revealed
4 only normal or mild results and do not support a more restrictive
5 functional limitation than the RFC assessment. (A.R. 33). The ALJ
6 found that although plaintiff claimed that she had been
7 hospitalized in September 2011 for inability to intubate her GI
8 pouch, medical records from an emergency room visit on September
9 30, 2011 revealed largely normal findings and no evidence of any
10 bowel obstruction or inflammation. (A.R. 342-363). Plaintiff
11 was provided with medication for pain and nausea and discharged
12 on the same day. Id. Accordingly, the ALJ concluded that
13 contrary to plaintiff's testimony, her condition had not worsened.
14 (A.R. 33, 64).

15
16 Moreover, as discussed above, the objective medical evidence
17 was not the only legally sufficient reason for discounting
18 plaintiff's credibility. See Robbins v. Social Security
19 Administration, 466 F.3d 880, 883 (9th Cir. 2006) (ALJ may cite
20 the medical record in concert with other factors in assessing a
21 claimant's credibility).

22
23 **CONCLUSION**

24
25 The legally valid reasons given by the ALJ for discounting
26 plaintiff's credibility sufficiently allow the Court to conclude
27 that the ALJ's credibility finding was based on permissible
28 grounds. The Court therefore defers to the ALJ's credibility

1 determination. See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th
2 Cir. 2007) (court will defer to ALJ's credibility determination
3 when the proper process is used and proper reasons for the
4 decision are provided); accord Flaten v. Sec'y of Health and Human
5 Serv., 44 F.3d 1453, 1464 (9th Cir. 1995). Where the ALJ has made
6 specific findings justifying a decision to disbelieve plaintiff's
7 symptom allegations and those findings are supported by
8 substantial evidence in the record, "we may not engage in second
9 guessing." Thomas, 278 F.3d at 958-59.

10

11 **ORDER**

12

13 For all of the foregoing reasons, the decision of the
14 Administrative Law Judge is affirmed.

15

16 LET JUDGMENT BE ENTERED ACCORDINGLY.

17

18 DATED: November 7, 2014.

19

20

21 /s/
22 ALKA SAGAR
23 UNITED STATES MAGISTRATE JUDGE
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